

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: LTDS CORPORATION	DOCKET NO. TCU-01-13 (FCU-00-4)
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**ORDER DIRECTING LTDS CORPORATION TO SHOW CAUSE
WHY CERTIFICATE SHOULD NOT BE REVOKED**

(Issued June 5, 2001)

On August 28, 2000, LTDS Corporation (LTDS) filed a complaint against Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), pursuant to Iowa Code §§ 476.101(8) and 476.3(1) and 199 IAC Ch. 6. In its order resolving the complaint, identified as Docket No. FCU-00-4, the Utilities Board (Board) expressed concern that, based on the facts presented, a mutual exchange of traffic might be lacking. According to 47 C.F.R. § 51.100(b):

A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well. (Emphasis added).

Based on the testimony and evidence presented at the time of the complaint proceeding, Local Internet Service Company (LISCO), an affiliated Internet services provider (ISP), was the only customer of LTDS.

The Board indicated:

The Board does not want to restrict competition by dictating how a new CLEC should solicit customers or by requiring that it not sign an ISP as its first customer. Equally, the Board is very troubled by the possibility that a company might become a certificated local exchange company for the sole purpose of obtaining uncompensated or undercompensated interconnection to the incumbent's telecommunications network at the expense of other telecommunications companies or end-user customers. It is questionable that LTDS can, over time, be viewed as a CLEC if it continues to have only LISCO for a customer. The interconnection required under the federal act is intended to promote local exchange competition and is for the direct benefit of CLECs, not ISPs. LTDS must show by its future actions that it is a bona fide CLEC by aggressively marketing competitively priced services throughout its service territory. It must win customers if it is to continue to receive the benefits, such as those ordered today, which are accorded a CLEC. If LTDS fails to do this, the Board will entertain a complaint pursuant to Iowa Code §§ 476.29(5) and (9) aimed at revoking the CLEC certificate granted by the Board to LTDS.¹

Since the issuance of its December 22, 2000, order, the Board is concerned that actions on the part of LTDS do not appear to be the actions of a bona fide competitive local exchange carrier (CLEC). Specifically, informal investigation by Board staff² indicates the following:

1. There appears to be no voice traffic from an LTDS customer or to an LTDS customer in any exchange other than the Fairfield exchange. LTDS may have

¹ "Order Requiring Interconnection Pursuant to Interconnection Agreement," *In Re: LTDS Corporation v. Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom*, Docket No. FCU-00-4 issued December 22, 2000, at page 5.

² Staff members investigating LTDS' actions will not advise the Board during this proceeding pursuant to Iowa Code § 17A.17(1) (2001).

a few business customers in the Fairfield exchange that account for less than a dozen voice access lines.

2. In the Fort Madison exchange, service was turned up by Qwest on November 11, 2000, although LTDS was given an E911 test number at that time to test its system, no test has yet been performed. Operator services were ordered by LTDS, but were apparently cancelled by LTDS when Qwest indicated its readiness to turn up the service. A concern was indicated that the LTDS switch did not have software installed that would enable it to provide the operator services.

3. Service was turned up in the Pella, Chariton, and Centerville exchanges. Voice trunks were then allegedly cancelled by LTDS in each of those exchanges.

4. LTDS ordered trunks in the Grinnell and Sigourney exchanges although it has no assigned NXX codes in those exchanges.

5. If LTDS has done any marketing or advertising for voice customers in any exchanges, the Board is unaware of those efforts.

6. LTDS' tariff does not contain a residential rate. The residential rate was deleted in a tariff revision filed January 19, 2001.

7. Iowa Telecom has interconnected with LTDS to provide xDSL services in the Fairfield, Mt. Pleasant, Knoxville, and Pella exchanges. LISCO, LTDS' parent company, is advertising that LISCO will be offering those services in those same exchanges and is taking pre-orders to sign up for the services.

Iowa Code § 476.29(5) (2001) obligates each local exchange utility to serve all eligible customers within the utility's service territory, unless explicitly excepted from the requirement by the Board. LTDS does not appear to meet this obligation based on its current tariff.

Iowa Code § 476.29(9) (2001) states,

A certificate may, after notice and opportunity for hearing, be revoked by the board for failure of a utility to furnish reasonably adequate telephone service and facilities. The board may also order a revocation affecting less than the entire service territory, or may place appropriate conditions on a utility to ensure reasonably adequate telephone service. Prior to revocation proceedings, the board shall notify the utility of any inadequacies in its service and facilities and allow the utility a reasonable time to eliminate the inadequacies.

The Board, in its December 22, 2000, order, placed LTDS on notice that it was concerned that LTDS was not acting as a bona fide CLEC and that it was subject to revocation of its certificate, pursuant to Iowa Code § 476.29(9) (2001), if it failed to act as a CLEC. In the five months that have passed since the issuance of that order, LTDS does not appear to have engaged in actions that show it is acting as a bona fide CLEC. This is a reasonable time for LTDS to have eliminated the inadequacies identified in the December 22, 2000, order.

The Board will order LTDS to respond to the preliminary concerns raised in this order. Following the filing of that response, any party desiring to produce additional information will be allowed to request intervention. A procedural schedule is established that will allow LTDS to appropriately respond to the Board's concerns.

Failure by LTDS to show that it is a bona fide CLEC will result in revocation of its certificate.

IT IS THEREFORE ORDERED:

1. This proceeding, identified as Docket No. TCU-01-13, has been established for the purpose of considering whether the certificate of public convenience and necessity for providing local telecommunications services of LTDS Corporation should be revoked pursuant to Iowa Code § 476.29(9) (2001).
2. The following procedural schedule is established:
 - a. LTDS Corporation is ordered to file prepared direct testimony with supporting exhibits and work papers responding to the preliminary concerns raised in this order, as well as any evidence showing LTDS operates as a bona fide CLEC, on or before June 22, 2001.
 - b. Any person desiring to intervene in this docket shall file a petition to intervene on or before July 3, 2001.
 - c. Consumer Advocate and any intervenors shall file statements of any additional concerns that they intend to bring to the Board's attention concerning the appropriateness of permitting LTDS Corporation to retain its current certificate of public convenience and necessity, along with prepared direct and responsive testimony, with supporting exhibits and work papers, on or before July 17, 2001.
 - d. LTDS shall file any prepared rebuttal testimony, with supporting exhibits and work papers, on or before August 3, 2001.

e. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 9 a.m. on August 14, 2001, in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request that appropriate arrangements be made.

f. Any party desiring to file an initial brief may do so on or before August 29, 2001.

g. Any party desiring to file a reply brief, responding to the arguments raised in any other party's initial brief may do so on or before September 5, 2001.

5. In the absence of objection, all work papers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

6. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

7. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record five

days after filing. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of the hearing.

8. Pursuant to 199 IAC 7.7(11), the deadline for filing responses to motions will be no later than five days from the date the motion is filed. All motions should be served on all other parties, and on all persons who have filed a petition to intervene that has not yet been ruled upon, by facsimile transfer or by electronic mail as well as by United States mail, on or before the date of filing.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 5th day of June, 2001.